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FOR FREEDOM OF THE PRESS

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BY EMAIL

November 6, 2019

University of Illinois Board of Trustees
352 Henry Administration Building, MC-350
506 S. Wright St.
Urbana, IL 61801

Re: NPR Illinois journalists seeking exemption from Title IX mandatory reporting

Dear Trustees:

The Reporters Committee for Freedom of the Press and the undersigned 20 media organizations write to express our concern regarding your refusal to grant an exemption from Title IX's mandatory reporting requirements to journalists at NPR Illinois, WUIS 91.9 FM, a National Public Radio member station owned by the University (hereinafter, "NPR Illinois"). We strongly urge you to reconsider that decision, which will prevent NPR Illinois journalists from using confidential sources in their coverage of sexual misconduct on campus. The First Amendment, the Illinois reporter's privilege, and the purpose of Title IX itself all provide support for an exemption in this case.

Journalists rely on confidential sources to carry out their constitutionally protected functions of informing public debate and holding officials accountable, including with regard to sex discrimination and sexual misconduct at educational institutions like the University. NPR Illinois journalists, in conjunction with ProPublica's Local Reporting Network, have already exposed shortcomings in the handling of sexual misconduct allegations at the University of Illinois at Champaign-Urbana. In denying their request for an exemption from Title IX mandatory reporting requirements, the University correctly identified the important interests of safeguarding a free press and of ensuring safety on campus, but it was wrong to suggest that these considerations are in tension. Use of confidential sources will facilitate accountability journalism that will, in turn, give students and the public the information they need to ensure that the University is complying with Title IX's requirements.

In August 2019, NPR Illinois and ProPublica published articles documenting ways in which the University of Illinois helped several professors retain unblemished records despite violations of school sexual misconduct policies. They also invited victims of sexual misconduct at Illinois colleges and universities to share their experiences and promised anonymity to anyone who came forward. Particularly given the sensitive and personal subject matter, sources are likely to be more willing to speak out if they can do so confidentially. But soon thereafter, the Title IX coordinator at the University of Illinois Springfield told station leadership that its reporters, as employees of the University, qualified as "responsible employees"

for Title IX purposes, which requires them to report alleged sexual misconduct to the Title IX office. Such mandatory reporting to the University would require journalists to reveal the identities of their sources to the school, preventing them from promising confidentiality. And without the use of confidential sources, those journalists might not be able to continue their investigative reporting on campus sexual misconduct. NPR Illinois requested an exemption from the Title IX policy; that request was rejected. In an email, Executive Director of University Ethics and Compliance Donna McNeely wrote that, although the University recognizes the importance of “journalistic integrity” and “freedom of the press,” requiring journalists to reveal their sources to the University would “appropriately support the interests of campus safety and advance the principles underlying existing mandatory reporting requirements.” But by chilling media coverage of sexual misconduct on campus, this decision undermines both freedom of the press and campus safety.

A free press is essential to a free society. The First Amendment’s guarantee of a free and unfettered press reflects the principle that for a democracy to function, citizens must know what their representatives and institutions are doing on their behalf. As the U.S. Supreme Court has observed, “[a]n informed public is the most potent of all restraints upon misgovernment.” *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936). The University’s mandatory reporting requirement interferes with newsgathering and prevents journalists from providing members of the public with the information they need to hold powerful public institutions and officials accountable.

Illinois public policy, as reflected in its reporter’s privilege statute, further underscores the paramount importance of protecting journalists’ confidential sources from compelled disclosure. See 735 Ill. Comp. Stat. 5/8-901 to 8-909. The statute preserves the autonomy of the press by allowing reporters to promise confidentiality to their sources. *In re Arya*, 589 N.E.2d 832, 834 (Ill. App. Ct. 1992). Incorporating the free press guarantees of the First Amendment and of article I, section 4 of the Illinois Constitution, the law recognizes “that the compelled disclosure of a reporter’s sources could compromise the news media’s first amendment right to freely gather and disseminate information.” *In re Special Grand Jury Investigation of Alleged Violation of Juvenile Court Act*, 472 N.E.2d 450, 454 (Ill. 1984); accord *People ex rel. Scott v. Silverstein*, 412 N.E.2d 692, 694–95 (Ill App. Ct. 1980), *rev’d on other grounds*, 429 N.E.2d 483 (1981) (“[T]his Act reflects a paramount public interest in maintenance of a vigorous, aggressive and independent press capable of participating in robust, unfettered debate over controversial matters, an interest which has always been a principal concern of the First Amendment.”) (internal citations and quotation marks omitted). The University should implement its Title IX program consistently with the clear public policy of the State of Illinois that journalists’ confidential sources must be protected.

Title IX gives the University leeway to issue an exemption in this case. Federal law grants universities some discretion to determine who qualifies as a responsible employee. 34 C.F.R. § 106.8. The University has already granted a discretionary exemption to confidential counselors. According to guidance from the Department of Education, “responsible employees” include “any employee [1] who has the authority to take action to redress the harassment, [2] who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or [3] an individual who a student could reasonably believe has this authority or

responsibility.” See Department of Education, Office of Civil Rights, *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties* (2001). NPR Illinois reporters have no authority to remedy harassment at the University and no student could reasonably believe they have such authority. They are therefore mandatory reporters only because the University has exercised its discretion to impose that duty.

And exempting NPR Illinois journalists from mandatory reporting requirements would better serve the purpose of Title IX, which is to prevent sex discrimination in education. Mandatory reporting of journalists’ confidential sources will chill coverage of the University’s handling of sexual misconduct. Suppressing news coverage of the University’s shortcomings will allow systemic abuses like those already uncovered to continue in secret. By contrast, letting journalists utilize confidential sources in their work would do far more to hold the University accountable and promote safety on campus, furthering the purpose of Title IX.

For these reasons, we respectfully urge you to grant NPR Illinois an exemption from Title IX’s mandatory reporting requirement.

Sincerely,

The Reporters Committee for Freedom of the Press
American Society of Magazine Editors
Californians Aware
Chicago Tribune Company LLC
Committee to Protect Journalists
Dow Jones & Company, Inc.
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Investigative Reporting Workshop at American University
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Student Press Law Center
Tully Center for Free Speech